

U.S. Patent Application Serial No. 10/658,209
Amendment and Response dated June 17, 2008
Reply to Office Action mailed March 17, 2008

REMARKS

As stated in the last two responses, the Applicants respectfully solicit the Examiner's acknowledgement of the formal drawings filed on December 5, 2003 as acceptable.

Claims 1-4, 6-9, 11, 12, 15-25, 27-30, 32, 33, 35-48, 50, 51, 53-62, 65 and 67-71 are pending. Claims 1, 16, 22, 35, 44, 54, 60, 70 and 71 are independent. Applicant notes with appreciation the allowance of claims 15-21, 53-62, 65 and 67-69. Applicant also notes with appreciation the allowance of dependent claims 6, 7, 27, 28, 37-42, 47 and 48 if rewritten in independent form to include the limitations of the base claim and any intervening claims.

By the present amendment, claims 1, 6, 22, 27, 35, 38-41, 44 and 47 are amended and claims 37, 70 and 71 are canceled.

Claim Objections

The Office Action states that claims 1-4, 6-9, 11, 12, 22, 25, 27-30 and 33 are objected to since the relationship between the annunciating steps and the displaying step is unclear. Independent claims 1 and 22, as amended herein, are believed to overcome the claim objections.

Claim Rejections Under 35 U.S.C. §§ 102(e) and (103(a))

Claims 1-3, 22-24 and 44 are rejected under 35 U.S.C. §102(e) as anticipated by Causey III et al. (U.S. Patent No. 6,558,320). Claims 1-3, 22-24 and 44 are also rejected under 35 U.S.C. §103(a) as obvious over Causey in view of Smith. (U.S. Patent No. 5,108,889).

Claims 4, 8, 9, 11, 12, 25, 29, 30, 32, 33, 45, 46, 50 and 51 are rejected under 35 U.S.C. §103(a) as obvious over Causey in view of Smith.

Claims 35, 36, 70 and 71 are rejected under 35 U.S.C. §103(a) as anticipated by Causey III et al in view of Bortz (U.S. Published Patent Application No. 2003/0216628).

Applicant respectfully requests withdrawal of these grounds for rejection.

Applicant respectfully submits that Causey does not anticipate the invention recited in claims 1, 22 and 44 as amended herein. In the Office Action, the Examiner admits that Causey does not state that an indicator is displayed in a second display area and appears to rely on an inherent teaching by stating that "Causey has to have an indicator to be able to identify which data point is being displayed." Applicant respectfully traverses this basis for rejection. As stated in the MPEP § 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art, which is not the case here. Applicant submits that a display need not necessarily have an indicator in a second display area to be able to identify which data point is being displayed. For example, the display in Causey may require a user to toggle among values displayed in a round robin manner to determine what a particular value is by virtue of its order relative to the other values and therefore without the need for other information provided in a second area on the display.

Neither Causey nor Smith, singly or in combination, discloses simultaneous display of indicators for respective constituent values with the indicator of the currently displayed constituent value of the medical data level being different from the other indicators. As stated above, Causey does not display a second area as recited in claims 1, 22 and 44. The Examiner states in the office action that it would have been obvious to modify Causey to provide each data point with a different time reference and thereby purportedly teach n indicators with n data points. Applicant disagrees for reasons provided below. Also, the Office Action cites Smith without any specific reference to any portion of this patent. Applicant therefore traverses this basis for rejection since it is incomplete. In the interest of furthering prosecution, the undersigned has reviewed the entire Smith patent in detail and commented on the portions thereof that might arguably be relevant. If, however, the

Examiner intends to apply the Smith reference to reject claims in a manner other than as commented on below, the Examiner is requested to do so in another non-final office action to afford the Applicant an opportunity to address these grounds which were not stated in the Office Action mailed on March 17, 2008.

Referring to col. 28, lines 59-61 of Smith, Smith discloses that an average value of tests can be presented but is silent about presenting constituent values of the average value. Referring to col. 28, lines 53-55, Smith also teaches that all test results over a number of weeks can be indicated as bar graphs with the day of the week included. These test results, however, do not include a time of day and therefore do not provide a time reference as suggested by the Examiner. Further, the bars in the bar graphs are all results over a period and not part of an average, as well as not displayed as recited in the amended independent claims 1, 22 and 44 (e.g., a second area configured to simultaneously display plural indicators corresponding to respective ones of the constituent values of an average with the indicator corresponding to a currently displayed constituent value being displayed differently from the other said indicators). Finally, referring to col. 55, lines 60-66 and col. 56, lines 1-8 of Smith, a scroll mode is disclosed to display individual assay results with an associated time and date of acquisition. As stated in Smith:

“Upon entering this mode at 959, the most recently acquired assay value is displayed at 960. After an appropriate delay at 961, the date and time of acquisition are displayed at 962. After another delay at 963, if no depression of the S button has occurred at 964, the program exits at 965 to the main routine. If the S button is depressed at 964, the previously acquired assay value and its associated date and time of acquisition are loaded at 966 for display. The program then loops at 967 to the beginning of the routine to repeat the procedure, displaying acquired assay value with its date and time. This process repeats until the earliest stored value has been shown when the next value displayed is again the most recent value 969.”

Thus, plural time and date indicators for plural points are not simultaneously displayed but rather only single values and their corresponding date and time are serially displayed. Also, there is no disclosure of an average of the assay results.

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In view of the foregoing, withdrawal of the rejections of the claims based on Causey and alternatively on the combination of Causey and Smith is believed to be proper and is respectfully requested.

The Office Action states that claim 11 is rejected in that the exact form of the indicators on the display has not been disclosed for a particular purposed or to solve a problem. Applicant disagrees. The flashing of indicators corresponding to a particular medical level is an advantage over prior systems described on page 2 of the application in paragraph 8 which states that "it is not always clear to a patient as to which values are the constituent values of a particular average." As described in paragraph 38 of the instant application, indicator blocks 310, 320 and 330 exemplifying the recited n indicators in the second area are flashed to indicate which constituent values are currently being displayed. Accordingly, this basis for rejecting claim 11 is traversed.

Regarding claim 12, the Examiner has not set forth a proper rejection under 35 U.S.C. §102 or §103 to show that the proposed combination of Causey III and Smith teaches or suggests the recited display screen in the independent claim 1 let alone a third area for displaying data recited in dependent claim 12. In the Office Action, the Examiner apparently relies on a data and time reference to purportedly teach the plural indicators in the recited second area of independent claims 1, 22 and 44. If this is the case, then the Examiner cannot replay on this same date and time reference to teach the third area for displaying a time of day and a date as recited in claim 12. Accordingly, this basis for rejecting claim 12 is also traversed.

The rejection of claims 35, 36, 70 and 71 in view of Causey and Bortz is now moot since claim 35 has been amended to include the recitations of allowable claim 37 and claims 70 and 71 are canceled.

Conclusion

In view of the arguments set forth above, Applicant submits that the present application is in condition for allowance and would appreciate early notification of the same.

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Invitation for a telephone interview

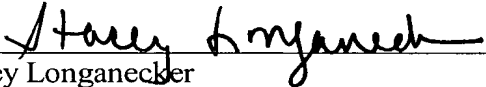
The Examiner is invited to call the undersigned at (202) 659-9076 if further issues remain with allowance of this case.

Deposit Account Authorization

Although no additional fee is believed due by submission of this paper, authorization is hereby made to charge any fees due or outstanding, or credit any overpayment, to Deposit Account No. **18-2220** (Order No. 45716).

Respectfully Submitted,

Dated: June 17, 2008



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